

Appln. No. 10/795,970
Election dated August 30, 2006
Reply to Office Action mailed July 31, 2006

REMARKS

Applicant's attorney thanks Examiner Gray for the issuance of the Office Action mailed July 31, 2006. In the Office Action, the Examiner requested an election under 35 U.S.C. 121 between the following inventions:

Invention I: Claims 1-12, and 18-21, drawn to a safety syringe and cap holding device, classified in class 604, subclass 187; and

Invention II: Claims 13-17, drawn to a method of using a syringe, classified in class 604, subclass 500.

In response to the Examiner's restriction requirement, applicant provisionally elects Invention I (i.e., Claims 1-12 and 18-21) for further prosecution herein. Notwithstanding this provisional election, applicant respectfully traverses the restriction requirement for the reasons set forth herein, and request withdrawals of same.

The restriction requirement restricts Inventions I and II as being a product and a process of use, respectively. A restriction in such circumstances is only proper where it is shown that "(A) the process of using as claimed can be practiced with another materially different product; or (B) the product as claimed can be used in a materially different process." MPEP § 806.05(h). In the instant matter, neither showing has been made.

There is no showing that applicant's claimed safety syringe and cap holding device may be used in a different process. The Office Action only asserts that "the safety

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syringe and cap holding device may be used in a different process such as lavage of an external wound, intravenous injection, or transfer of fluid in a catheter assembly, etc.” However, even if the claimed safety syringe and cap holding device is used for lavage, intravenous injection, etc., the method of using the safety syringe and cap holding device has not been shown to be materially different from the claimed method.

Further, the Office Action asserts that “the method of using the syringe can be practiced with a materially different syringe from the safety syringe and cap holding device as claimed.” There is no support for this assertion, and no showing relating to a materially different syringe that could be used to practice the invention.

Therefore, because it has not been shown that applicant’s process of using as claimed can be practiced with another materially different product or that the product as claimed can be used in a materially different process, applicant respectfully requests that the restriction requirement be withdrawn. In any event, applicant hereby reserves the right to file a divisional application directed to the non-elected invention.

All issues raised in the restriction requirement are believed to have been addressed. Applicant respectfully submits that all of the pending claims are properly included in the present application, and are in condition for allowance. Examination is requested and favorable action solicited.

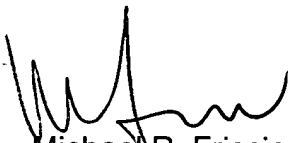
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No fees are believed to be due in connection with the submittal of this Election. If there are any fees, including extension and petition fees, required as a result of this Election, the Examiner is hereby authorized to charge them to Deposit Account No. 503571.

Respectfully submitted,

McCARTER & ENGLISH, LLP

8/30/06

By: 
Michael R. Friscia
Reg. No. 33,884

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
Tel. No. (973) 639-8493